

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

	X
	:
WAYNE BERRY,	:
	:
	Plaintiff, :
	:
- against -	: 01:07 CV 7634 WHP
	: Judge William H. Pauley III
DEUTSCHE BANK TRUST COMPANY	: ECF Case
AMERICAS (f.a. BANKERS TRUST COMPANY)	:
AND JP MORGAN CHASE BANK, IN THEIR	: NOTICE OF MOTION TO
SEPARATE CAPACITIES AS AGENTS FOR	: DISMISS PLAINTIFF'S SECOND
THE PRE-AND POST-PETITION LENDERS OF	: AMENDED COMPLAINT
FLEMING COMPANIES, INC.; GENERAL	:
ELECTRIC CAPITAL CORPORATION; C&S	:
WHOLESALE GROCERS, INC.; THE POST-	:
CONFIRMATION TRUST OF FLEMING	:
COMPANIES, INC.; ROBERT KORS; CORE-	:
MARK HOLDINGS INC.; AND DOES 1 TO 200,	:
	:
	Defendants. :
	:
	X

PLEASE TAKE NOTICE that, upon the Declaration of Lex R. Smith, the exhibits attached to it, and the accompanying brief, Defendant C&S Wholesale Grocers, Inc. respectfully moves this Court for an Order, pursuant to Federal Rules of Civil Procedure 8(a)(2), 8(d)(1), 12(b)(6), and 12(f), dismissing the claims against it in this action.

Dated: January 25, 2008

NIXON PEABODY LLP

By: /s/ Christopher M. Mason
Christopher M. Mason
CM-7146

437 Madison Avenue
New York, New York 10022
(212) 940-3000

Attorneys for Defendant
C&S Wholesale Grocers, Inc.